IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15447 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

GULAM JAFAR F.MALEK - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner State Road Transport Corporation has challenged the legality of an Award dated 09.03.2001 passed by the Industrial

Tribunal, Ahmedabad. Though today, the Civil Application No. 8527 of 2005 filed by the workman was placed on Board, seeking retiral benefits; considering the facts and circumstances of the case, with the joint request of the advocates appearing for both the sides, the main petition itself was taken up for final hearing.

2. By the impugned Award, the Industrial Tribunal was pleased to allow the reference of the respondent workman partially. The petitioner had conducted a departmental inquiry against the respondent for having remained unauthorisedly absent for a period of about 68 days, between 23.04.1991 to 30.06.1991. Upon conclusion of the departmental inquiry, disciplinary authority imposed a punishment of dismissing the respondent from service by Order dated 30.12.1991. First appellate authority reduced the punishment and ordered that the respondent will be placed on the original pay-scale for a period of 3 years. Second appellate authority further reduced the punishment and by an Order dated 01.07.1994, provided that the respondent will be placed on the original pay for a period of 2 years w.e.f. 01.07.1994. The workman challenged his punishment before the Industrial

Tribunal.

3. The Industrial Tribunal in its impugned Award observed that the misconduct of having remained absent for a period of 68 days unauthorisedly is proved. The Industrial Tribunal also observed that there is nothing on record to suggest that the workman had given leave report before remaining absent or during his absence period. In that view of the matter, the Industrial Tribunal concluded that the charges against the workman were proved. However, considering the quantum of punishment, Industrial Tribunal found that the penalty imposed is excessive and ordered that the same will be substituted by a penalty of withholding of two increments permanently.

4. When the Industrial Tribunal found that the charges against the respondent workman were validly proved, as held by the Hon'ble Supreme Court in number of decisions, it was open for the Industrial Tribunal to interfere with the quantum of punishment only if the Tribunal comes to the conclusion that the punishment imposed was shockingly disproportionate to the proved charges. In the present case against the respondent who was working as a driver, proved misconduct was of

remaining absent unauthorisedly for a period of 68 days. Past record of the respondent also was not blemishless. On number of occasions, he was found to have remained absent without proper leave.

5. In that view of the matter, it was not open for the Industrial Tribunal to interfere with the punishment imposed.

6. In the result, the impugned Award is required to be and is hereby set aside. Rule made absolute. No orders as to costs.

(Akil Kureshi, J.)

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